

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JIMMY SCHMIDT**

Claimant

VS.

**ADM MILLING**

Respondent

Self-Insured

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Docket No. 213,855

**ORDER**

Both claimant and respondent appealed Administrative Law Judge Nelsonna Potts Barnes' Award entered on January 9, 1998. The Appeals Board heard oral argument by telephone conference on July 15, 1998.

**APPEARANCES**

Claimant appeared by his attorney, Joseph Seiwert of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Charles W. Hess of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and has adopted the stipulations listed in the Administrative Law Judge's Award.

**ISSUES**

The Administrative Law Judge found claimant suffered a work-related injury to his upper back and right shoulder while employed by the respondent on June 18, 1996. The Administrative Law Judge limited claimant's entitlement to workers compensation benefits to medical treatment, finding claimant had suffered only a temporary injury and not a permanent injury.

Claimant contends the record proves he did sustain a permanent injury, and he is entitled to permanent partial disability benefits based on a work disability.

Respondent questions whether claimant has proven he suffered any type of injury while employed by the respondent on June 18, 1996.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds the Administrative Law Judge's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. The Appeals Board further finds it is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own, as if specifically set forth herein.

Specifically, the Appeals Board concludes the record supports the Administrative Law Judge's finding that claimant suffered a temporary and not a permanent upper back and right shoulder injury while employed by the respondent on June 18, 1996. Claimant was treated for this work-related injury by Robert W. Yoachim, M.D., on the day of the injury, June 18, 1996, and on three other occasions, June 21, 25, and 27, 1996. Dr. Yoachim testified he performed a physical examination of the claimant, and claimant had subjective complaints of pain that were extremely severe and unrelenting. However, Dr. Yoachim's physical examination, x-rays, and bone scan found no objective evidence of injury.

Claimant also was seen on July 15, 1996, for a second opinion by Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. After examining the claimant, Dr. Murati's impression was interscapular and thoracic strain. Dr. Murati found claimant had limited range of motion in his right shoulder and he made extreme complaints of pain during any type of movement of his right shoulder.

Both physicians reviewed a surveillance videotape of claimant made during the 1996 Fourth of July weekend. The videotape showed claimant freely moving his right shoulder and right upper extremity as he was casting into the lake and performing other various fishing activities. After reviewing the videotape, both doctors found claimant's subjective complaints of pain were entirely inconsistent with the activities he was performing on the videotape. Both physicians opined that claimant had no permanent impairment and was not in need of further medical treatment as the result of his work-related upper back and right shoulder injury.

At the regular hearing held on September 15, 1997, claimant testified his right shoulder remained symptomatic and he had continuing problems lifting with his right upper

extremity. This testimony was contradicted by the testimony of Michael R. Schumacher, a registered physician assistant, who on June 24, 1997, examined claimant for a DOT physical. Mr. Schumacher testified that claimant made no complaints of right shoulder pain during the physical. Claimant was employed by W. J. Menefee Construction Company from August 1996 through June 1997 following his employment with the respondent. Timothy Roy Howerton, foreman for Menefee Construction Company and claimant's supervisor, testified claimant was required to perform heavy construction work and had made no complaints of pain in his right shoulder or had any right shoulder problems performing those duties.

For the reasons set forth above and in the Administrative Law Judge's Award, the Appeals Board finds claimant failed to prove he suffered a permanent injury to his upper back and right shoulder. Therefore, claimant's compensation benefits are limited to medical treatment.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' Award dated January 9, 1998, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
Charles W. Hess, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director